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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,577	09/22/2005	Sylvie Pridmore-Merten	3712036.00597	3814
29157 K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690	7590 06/25/2010		<div>EXAMINER</div> <div>CLARK, AMY LYNN</div>	
			<div>ART UNIT</div> <div>1655</div>	<div>PAPER NUMBER</div>
			<div>NOTIFICATION DATE</div> <div>06/25/2010</div>	<div>DELIVERY MODE</div> <div>ELECTRONIC</div>

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary

Application No.

10/526,577

Applicant(s)

PRIDMORE-MERTEN ET AL.

Examiner

Amy L. Clark

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-7, 17 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, 17 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/08/2010 has been entered.

Acknowledgment is made of the receipt and entry of the amendment filed on 05/11/2010 with the amendment of claims 1, 2 and 17, and newly added claim 22.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Any rejection found in the previous Office Action and not repeated herein has been withdrawn based upon Applicant's amendments.

Claims 1, 2, 4-7, 17 and 22 are currently being examined on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 and 4-7 are rejected under 35 U.S.C. 102(a) as being anticipated by Daba et al. (U, "Effects of L-Carnitine and Ginkgo biloba extract in Experimental Bleomycin-Induced Lung Fibrosis". Pharmacological Research, Vol. 45, No 6 (June 2002) 461-467, abstract only).

Daba teaches a composition comprising an extract of Ginkgo biloba and L-carnitine administered to rats in drinking water (which reads on a pet food composition and a pharmaceutical composition because the carnitine and extract of Ginkgo biloba were administered to study the effects on BLM-induced lung fibrosis).

Although Daba does not that the composition stimulates hair growth and modulates hair sebum lipid production and/or composition, the ingredients and the route of administration for the delivery of the ingredients taught by Daba are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, stimulating hair growth and modulating hair sebum lipid production and/or composition is inherent to the composition taught by Daba.

Therefore, the reference anticipates the claimed subject matter.

Claims 1, 2, 4-7 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaynor et al. (B, 5,904,924).

Gaynor teaches a nutritional powder composition, which may be administered as a nutritional supplement (and reads on pharmaceutical composition) comprising ginkgo biloba, carnitine, nicotinamide and Japanese green tea (standardized to 7.5% catechins- which reads on tea catechins and the limitations of claim 22) (See claim 1).

Although Gaynor does not that the composition stimulates hair growth and modulates hair sebum lipid production and/or composition, the ingredients and the route of administration for the delivery of the ingredients taught by Gaynor are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, stimulating hair growth and modulating hair sebum lipid production and/or composition is inherent to the composition taught by Gaynor.

It is noted that the reference does not expressly teach that the composition is a pet food, however, the intended use of the claimed composition does not patentably distinguish the composition, *per se*, since such undisclosed use is inherent in the reference composition. In order to be limiting, the intended use must create a structural difference between the claimed composition and the prior art composition. In the instant case, the intended use does not create a structural difference, thus the intended use is not limiting.

"[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not

necessarily make the claim patentable. In re Best, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). See also MPEP § 2112.01 with regard to inherency and product-by-process claims.

Furthermore, it would have been expected that since the composition is safe for human consumption and could be administered to humans that the composition could be administered to a pet.

Therefore, the reference anticipates the claimed subject matter.

Claims 1, 2, 4-7, 17 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by SCHALTENBRAND et al. (P, DE 19907586 A1, Abstract only).

SCHALTENBRAND teaches a nutritional supplement (which reads on pharmaceutical composition) comprising ginkgo biloba, carnitine, creatine (which reads on claim 2), omega-3-fatty acids (which reads on claims 2 and 17) and ginseng (which reads on claim 22).

Although SCHALTENBRAND does not that the composition stimulates hair growth and modulates hair sebum lipid production and/or composition, the ingredients and the route of administration for the delivery of the ingredients taught by SCHALTENBRAND are one and the same as disclosed in the instantly claimed invention of Applicant. Thus, stimulating hair growth and modulating hair sebum lipid production and/or composition is inherent to the composition taught by SCHALTENBRAND.

It is noted that the reference does not expressly teach that the composition is a pet food, however, the intended use of the claimed composition does not patentably distinguish the composition, *per se*, since such undisclosed use is inherent in the reference composition. In order to be limiting, the intended use must create a structural difference between the claimed composition and the prior art composition. In the instant case, the intended use does not create a structural difference, thus the intended use is not limiting.

"[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). See also MPEP § 2112.01 with regard to inherency and product-by-process claims.

Furthermore, it would have been expected that since the composition is safe for human consumption and could be administered to humans that the composition could be administered to a pet.

Therefore, the reference anticipates the claimed subject matter.

Terminal Disclaimer

The terminal disclaimer filed on 05/11/2010 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 10/527,097 and 10/597,436 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571)272-1310. The examiner can normally be reached on Monday to Friday between 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Amy L Clark/
Primary Examiner, Art Unit 1655